declaration since all facts are on the record, that a conception and reduction to practice with diligence from conception to reduction to practice is present in this case. It is clear and cannot be disputed from the record that the provisional application was filed September 30, 1997, this date being prior to the filing date of Van Buskirk. It is also clear and cannot be disputed from the record that the parent of the subject application was filed October 7, 1998, seven days subsequent to the statutory requirement for claiming priority under 35 U.S.C. 119. It follows that the filing of the provisional application initially provided a constructive reduction to practice for a parent application to be subsequently filed or at least provided diligence after a conception with the filing of the parent of the subject application being either a second constructive reduction to practice or a first constructive reduction to practice after the conception with diligence (diligence being the filing and continued pendency of the provisional application). It follows that the only break in the continuum was the seven day period noted above between the end of one year subsequent to filing of the provisional application and the filing of the parent of this application. This short break in the continuum does not amount to a failure of the diligence already completed as evidenced by the decision in Keizer v. Bradley, 270 F.2d 396, 397, 123 USPQ 215, 216 (CCPA 1959) wherein it is stated that "'attorney -diligence' and 'engineering-diligence'...does not require than 'an inventor or his attorney...drop all other work and concentrate on the particular invention involved...' (Emery v. Ronden, 188 USP! 264, 268 (Bd. Inter. 1974)." as stated at MPEP 2138.06. It follows that Van Buskirk is still not available as a reference under 35 U.S.C. 102 or 103 in this case, however, for a reason different from that previously presented.

Claims 18 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van Buskirk in view of Woo (U.S. 5,926,711). The rejection is respectfully traversed for reasons stated above since Van Buskirk is not available as a reference.

Claims 14 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van Buskirk in view of Chan (U.S. 6,051,467). The rejection is respectfully traversed for reasons stated above since Van Buskirk is not available as a reference.

I declare under penalty of perjury, on information and belief, that the above recited facts as to the date of serial number and date of filing of the provisional application and the parent of the subject application are true and correct.

In view of the above remarks and declarative form of this response, favorable reconsideration and allowance are respectfully requested.

Respectfully submitted,

July 23, 2001

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